# STATE OF NEW YORK

6538--B

Cal. No. 218

2021-2022 Regular Sessions

# IN ASSEMBLY

March 19, 2021

Introduced by M. of A. MAGNARELLI, BARRETT, ENGLEBRIGHT, ZINERMAN, THIELE, SIMON, LAVINE, LUPARDO, KELLES, WALLACE, SILLITTI, OTIS -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the highway law and the transportation corporations law, in relation to agreements for fiber optic utility use and occupancy of state right of way

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subdivision 24-e of section 10 of the highway law, as added by section 1 of part RRR of chapter 59 of the laws of 2019, is amended to read as follows:

24-e. The commissioner of transportation is hereby authorized to enter into an agreement with any fiber optic utility for use and occupancy of the state right of way for the purposes of installing, modifying, relocating, repairing, operating, or maintaining fiber optic facilities. Such agreement may include a fee for use and occupancy of the right of way, provided, however, such fee shall not be greater than fair market value. Any provider using or occupying a right of way in fulfillment of a state grant award through the New NY Broadband Program shall not be subject to a fee for such use or occupancy. **Any provider that is owned and operated by a municipality, or is owned and operated by a domestic corporation as such term is defined in subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law and possessing a federal tax exemption pursuant to paragraph (3) of subsection (c) of section 501 of the federal internal revenue code (26 United States Code Section 501(c)(3)) shall not be subject to a fee for such use or occupancy; furthermore, the development authority of the north country, as defined by title twenty-nine of article eight of the**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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**public authorities law, shall not be subject to a fee for such use or occupancy.** Any fee for use or occupancy charged to a fiber optic utility shall not be passed through in whole or in part as a fee, charge, increased service cost, or by any other means by a fiber optic utility to any person or entity that contracts with such fiber optic utility for service. Any compensation received by the state pursuant to such agreement shall be deposited by the comptroller into the special obligation reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law. Nothing herein shall impair, inhibit, or otherwise affect the ability of any municipality to regulate zoning, land use, or any other power or authority granted under the law. For purposes of this subdivision, "municipality" shall include a county, city, village, or town.

§ 2. Section 7 of the transportation corporations law, as added by section 2 of part RRR of chapter 59 of the laws of 2019, is amended to read as follows:

§ 7. Agreement for fiber optic utility use and occupancy of state right of way. The commissioner of transportation is hereby authorized to enter into an agreement with any fiber optic utility for use and occupancy of the state right of way for the purposes of installing, modifying, relocating, repairing, operating, or maintaining fiber optic facilities. Such agreement may include a fee for use and occupancy of the right of way, provided, however, such fee shall not be greater than fair market value. Any provider using or occupying a right of way in fulfillment of a state grant award through the New NY Broadband Program shall not be subject to a fee for such use or occupancy. **Any provider that is owned and operated by a municipality, or is owned and operated by a domestic corporation as such term is defined in subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law and possessing a federal tax exemption pursuant to paragraph (3) of subsection (c) of section 501 of the federal internal revenue code (26 United States Code Section 510(c)(3)) shall not be subject to a fee for such use or occupancy; furthermore, the development authority of the north country, as defined by title twenty-nine of article eight of the public authorities law, shall not be subject to a fee for such use or occupancy.** Any fee for use or occupancy charged to a fiber optic utility shall not be passed through in whole or in part as a fee, charge, increased service cost, or by any other means by a fiber optic utility to any person or entity that contracts with such fiber optic utility for service. Any compensation received by the state pursuant to such agreement shall be deposited by the comptroller into the special obligation reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law. Nothing herein shall impair, inhibit, or otherwise affect the ability of any municipality to regulate zoning, land use, or any other power or authority granted under the law. For purposes of this section, "municipality" shall include a county, city, village, or town.

§ 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law; provided, however, that the amendments to subdivision 24-e of section 10 of the highway law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed to expire and repeal therewith; and provided, further, that the amendments to section 7 of the transportation corporations law made by section two of this act shall not affect the repeal of such section and shall be deemed to expire and repeal therewith.